

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Garry Parker,	:	
	:	
Plaintiff,	:	Case No. 2:17-cv-633
	:	
v.	:	Judge: Edmund A. Sargus
	:	
Breck's Ridge, LLC, et al.,	:	Magistrate Judge: Deavers
	:	
Defendants.	:	

MOTION FOR DECERTIFICATION OF THE CONDITIONAL CLASS
BY DEFENDANT BRECK'S PAVING, INC.

Now comes Defendant, Breck's Paving, Inc., by and through undersigned counsel, and hereby requests the Court decertify its conditional class certification as to Defendant Breck's Paving, Inc., because none of the remaining Opt-In Plaintiffs were employees of Defendant, Breck's Paving, Inc. The remaining Opt-In Plaintiffs are current or former employees of Defendant Breck's Ridge, LLC, only. The grounds for this Motion are more fully set forth in the attached Memorandum in Support.

Respectfully submitted,

/S/ William R. Creedon
William R. Creedon (0064931)
Timothy E. Cowans (0040557)
SCOTT SCRIVEN, LLP
250 East Broad Street, Suite 900
Columbus, Ohio 43215-3725
PH: (614) 222-8686
FX: (614) 222-8702
Email: BillC@scottscrivenlaw.com
Tim@scottscrivenlaw.com

***Attorneys for Defendant,
Breck's Paving, Inc.***

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MEMORANDUM IN SUPPORT

On November 6, 2017, Plaintiff filed a Pre-Discovery Motion for Conditional Class Certification and Court-Supervised Notice to Potential Op-In Plaintiffs Pursuant to 29. U.S.C. § 216(b) [ECF No. 11]. On January 24, 2018, the Court granted Plaintiff's motion conditionally certifying the following FLSA class:

All current and former non-exempt employees of Defendants who performed general labor and had an automatic meal deduction applied in any workweek that they were scheduled and worked over 40 hours for the period beginning three years immediately preceding the filing of the Motion for Conditional Certification until final disposition of this case.

Pursuant to the Court's opinion and order, the Defendants identified all putative class members and the Plaintiff distributed a court approved opt-in notice to the putative class members. The Court further ordered that the putative class members had forty-five (45) days from the date Plaintiff distributed a court approved opt-in notice to the putative class members to become members of the opt-in class. [ECF No. 16].

On March 6, 2018, March 16, 2018, and March 26, 2018, Plaintiff filed Notices of Consent to Join for the following opt-in class members:

Jeremy Howard
Billy Burrell
Jerry Welsh
Wyatt Henson
John Gardner II
Richard Justus

[ECF Nos. 17, 18, and 19].

John Gardner, II and Richard Justus were the only Opt-In Plaintiffs who worked for Defendant Breck's Paving, Inc. Opt-In Plaintiffs Jerry Welsh, Wyatt Henson, Jeremy Howard, and Billy Burrell worked for Beck's Ridge, LLC, only. The Court's forty-five (45) day deadline for the putative class members to become members of the opt-in class subsequently expired without any additional Opt-In Plaintiffs joining the opt-in class.

On April 10, 2019, Opt-In Plaintiff John Gardner, II, filed a Notice of Withdraw of Consent to Join voluntarily removing himself from the opt-in class. [ECF No. 36]. On April 14, 2019, Opt-In Plaintiffs Jerry Welsh, Wyatt Henson, and Richard Justus filed Notices of Withdraw of Consent to Join voluntarily removing themselves from the opt-in class. [ECF No. 37]. The only remaining Opt-In Plaintiffs are Jeremy Howard and Billy Burrell who never worked for Defendant Breck's Paving, Inc., and worked for Defendant Breck's Ridge, LLC, only.

Therefore, because the opt-in class does not contain any Opt-In Plaintiffs who worked for Defendant Breck's Paving, Inc., the conditional class certification should be decertified as to Defendant Breck's Paving, Inc.

Respectfully submitted,

/s/ William R. Creedon

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Columbus, Ohio 43215-3725
PH: (614) 222-8686
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Decertification of the Conditional Class By Defendant Breck's Paving, Inc., has been served by means of the Court's electronic filing system this 14th day of June, 2019, upon the following:

Matthew J.P. Coffman, Esq.
Coffman Legal, LLC
1457 S. High St.
Columbus, OH 43207
PH: (614) 949-1181
FX: (614) 386-9964
Email: mcoffman@mcoffmanlegal.com

Daniel I. Bryant, Esq.
Bryant Legal, LLC
1457 S. High St.
Columbus, OH 43207
PH: (614) 704-0546
FX: (614) 573-9826
Email: dbryant@bryantlegalllc.com

***Attorneys for Plaintiff,
Garry Parker***

D. Wesley Newhouse, Esq.
Michael S. Kolman, Esq.
Newhouse, Prophater, Kolman & Hogan, LLC
5025 Arlington Centre Blvd, Suite 400
Columbus, OH 43220
PH: (614) 255-5441
FX: (614) 255-5446

Email: WNewhouse@npkhlaw.com
MKolman@npkhlaw.com

***Attorney for Defendant,
Breck's Ridge, LLC***

/s/ William R. Creedon
William R. Creedon (0064931)